149 U.S. 789

RECORD, CASE NO. 14464.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO., 638.

THE UNITED STATES, APPELLANT,

vs.

WILLIAM W. GILBERT.

APPEAL FROM THE COURT OF CLAIMS.

FILED JANUARY 24, 1891.

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1 IN THE COURT OF CLAIMS.

WILLIAM W. GILBERT
vs.
THE UNITED STATES. } No. 16316.

I.—*Petition, filed August* 29, 1888.

To the honorable judges of the Court of Claims:

Your petitioner, William W. Gilbert, a citizen of the United States, and a resident of Rochester, in the State of New York, respectfully shows:

That from the 1st day of January, 1886, to the 30th day of June, 1887, he was a commissioner of the circuit court of the United States for the northern district of New York, duly qualified and acting.

That during said time he issued his warrants for the arrest of various persons in said district for a violation of the laws of the United States on complaints duly sworn to and approved as required by rule of court; that he issued subpœnas in said cases for witnesses to testify on behalf of the United States; that the warrants and subpœnas were duly exe-

2 cuted by the United States marshal, and where the defendants and witnesses were brought before him for examination the criminal charges were heard and disposed of by him according to the law and the evidence.

Your petitioner made up his accounts for said services, and charged the fees authorized by sections 847 and 828 of the Revised Statutes; that said accounts were duly verified and presented to the United States court for its approval, and said court approved the same as being just and in accordance with law.

That said accounts were then presented to the accounting officers of the United States Treasury Department for payment, and they refused to allow the sum of $586.35, as per exhibit "A" herewith; and although payment of said amount has been repeatedly demanded, yet no part of the same has been paid to him, nor to any one for him, nor has any part of the same been allowed to him in any way as a credit or set-off by any officer or department of the United States; but, on the contrary, allowance and payment thereof has been refused.

Your petitioner further shows that no assignment or transfer of said claim, or any part thereof, has been made by him, and that he is the lawful owner thereof.

Wherefore your petitioner prays judgment against the defendant for $586.35.

WILLIAM W. GILBERT.

By his attorney:

CHARLES C. LANCASTER.

3 *Exhibit A.*

1. For drawing recognizances of witnesses and defendants in excess of four folios, and for taking separate acknowledgments, disallowed, as follows:

Report 97266	$3.75
" 98358	9.30
" 101636	5.40
" 105794	10.65
	29.10

2. For making copies of warrant of final commitment for jailors, in addition to copies for clerk of court and certificate to same, disallowed, as follows:

Report 97266	$4.00
" 98358	3.05
" 101636	3.25
" 105794	10.05
	20.35

3. Case vs. A. W. McNames et al. for drawing bond of March 13, 1886, disallowed, as follows:

Report 97266	$1.35

4. Case vs. James Caldwell and George E. Keeler, for drawing complaint in excess of four folios, and making copy of same, disallowed, as follows:

Report 97266	$2.90

5. For administering oaths to more than four witnesses in any one case, disallowed, as follows:

Report 97266	$5.10
" 101636	1.20
	6.30

4 6. For making more than one copy of order for marshal to pay witnesses, disallowed, as follows:

Report 98358	$22.50
" 101636	12.60
" 105794	24.75
	59.85

7. For issuing more than one subpœna in any one case, entering return and filing same, disallowed, as follows:

Report 101636	$1.50

8. For hearing and deciding on criminal charges 93 days, disallowed, as follows:

Report 97266	$110.00
" 98358	95.00
" 101636	95.00
" 105794	165.00
	465.00
Total disallowed and herein claimed	$586.35

DISTRICT OF COLUMBIA:

Before me, a notary public in and for the District of Columbia, personally appeared Charles C. Lancaster, who, being duly sworn, deposes and says that he is the attorney for the petitioner named in the foregoing petition, and that he is authorized by warrant of attorney duly executed by said petitioner and filed herewith to verify said petition, and petitioner is

justly entitled to the amount therein claimed from the United States, after allowing all just credits and set-offs, and that the facts therein stated are true to the best of his knowledge and belief.

CHAS. C. LANCASTER.

Subscribed and sworn to before me this 27th day of August, 1888.
[SEAL.] A. S. TAYLOR,
Notary Public.

Petitioner's post-office address is Rochester, New York.

5 II.—*Traverse. Filed May* 2, 1890.

And now comes the Attorney-General, on behalf of the United States, and, answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

JOHN B. COTTON,
Assistant Attorney-General.

6 III.—*Findings of fact and conclusion of law. Filed November* 10, 1890.

This case having been heard by the Court of Claims, the court, upon the evidence, finds the fact to be as follows:

I.

Claimant was a commissioner of the circuit court of the United States for the northern district of New York from the first day of January, 1886, to the thirtieth day of June, 1887, duly qualified and acting.

II.

His accounts for services and fees during said period, verified by his oath, were presented to the district court of said district in the presence of the district attorney, for approval, and an order approving the same as being just and according to law was duly entered of record. The accounts thus approved were presented to the accounting officers of the Treasury for payment, and they refused payment for the following services, to wit:

1. For drawing recognizances of defendants in excess of four folios each and not exceeding seven folios, at 15 cents per folio, and taking a separate acknowledgment for each defendant and surety, at 25 cents each, $29.10.

It was necessary to take acknowledgments separately, and it was so done.

2. For making copies of warrants of final commitment for jailors as their authority to hold the prisoner, at 10 cents per folio, and certificate to said copies, at 15 cents each, $20.35.

7 3. For drawing new bond of defendant in case vs. A. W. McNames, on March 13, 1886, having been surrendered by his bondsmen, $1.35.

4. In the case vs. James Caldwell and George E. Keeler, for drawing complaint in excess of four folios, the excess being ten folios, at 15 cents per folio, and making copy of warrant of arrest to be sent to court, 10 cents per folio, and certificate at 15 cents, $2.90.

This was a prosecution for perjury.

5. For administering oaths, at 10 cents each, to more than four witnesses in any one case, $6.30.

6. For making more than one copy of order for marshal to pay witness on behalf of the United States their mileage and attendance, the excess being one copy, at 10 cents per folio, $59.85.

7. For issuing more than one subpœna in any one case for witnesses on behalf of the United States, at 25 cents each, $1.50.

8. For hearing and deciding on criminal charges where one or more of the following proceedings was considered on the day charged for; and arraignment and plea of the person charged, an examination of witnesses, the granting of a continuance on motion of one of the parties, fixing the amount of bail, and if not tendered committing the defendant to jail, being 93 days, at $5.00 per day, $465.00.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides as a conclusion of law that the claimant is entitled to recover the fees charged in the items 1, 2, 4, 5, 6, 7, and 8, amounting to the sum of $585.00. Item 3 dismissed.

BY THE COURT.

8 IV.—*Judgment of court.*

WILLIAM W. GILBERT
vs.
THE UNITED STATES. } 16316.

At a Court of Claims held in the city of Washington on the 10th day of November, A. D. 1890, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the said William W. Gilbert do have and recover of and from the United States the sum of five hundred and eighty-six dollars and thirty-five cents ($586\frac{35}{100}$).

BY THE COURT.

[The court delivered no opinion in this case.]

9 V.—*Application of defendants for and allowance of appeal.*

WILLIAM W. GILBERT
vs.
THE UNITED STATES. } No. 16316.

From the judgment rendered in the above-entitled cause on the 10th day of November, 1890, in favor of the claimant, the defendants, by their Attorney-General, on the 5th day of January, 1891, make application for and give notice of an appeal to the Supreme Court of the United States.

JOHN B. COTTON,
Assistant Attorney-General.

Filed and allowed in open court January 5, 1891.

WILLIAM A. RICHARDSON,
Chief Justice.

10 VI.

IN THE COURT OF CLAIMS.

WILLIAM W. GILBERT
vs.
THE UNITED STATES. } No. 16316.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the judgment of the court, of the application of the Attorney-General for and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 13th day of January, A. D. 1891.

[SEAL.]

JOHN RANDOLPH,
Assist. Clerk Court of Claims.

(Indorsed on cover:) Court of Claims. No. 638. The United States, appellant, *vs.* William W. Gilbert. Filed January 24, 1891.

Office Supreme Court U. S.
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JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, APPELLANT,
vs.
WILLIAM W. GILBERT, APPELLEE.
} No. 638.

Appeal from the Court of Claims.

BRIEF FOR APPELLEE.

CHARLES C. LANCASTER,
Counsel for Appellee.

MITCHELL, PRINTER.

IN THE

Supreme Court of the United States.

October Term, 1892.

THE UNITED STATES, Appellant,
vs.
WILLIAM W. GILBERT, Appellee. } No. 638.

Appeal from the Court of Claims.

FEES OF UNITED STATES COMMISSIONER.

BRIEF FOR APPELLEE.

It is contended on behalf of appellee that all the items of charges included in the judgment of the court below are clearly authorized by the provisions of sections 828 and 847 of the Revised Statutes, U. S.

Item 1. For drawing recognizances of defendants in excess of four folios each and not exceeding seven folios, at 15 cents, is authorized by the 7th clause of section 847 and 8th clause of section 828, R. S. No fixed rule can be laid down controlling the number of folios in a recognizance. Rand *vs.* U. S., 48 Fed. Rep., 357; U. S. *vs.* Barber, 140 U. S. R., 177.

The charge for taking a separate acknowledgment for each defendant and surety, at 25 cents each, is authorized by the 2d clause of section 847, R. S. This charge is not in conflict with the decision in the Ewing and Barber cases, 140 U. S.

R., where the acknowledgments of defendant and surety were taking at the same time, and was a *single* act. Such was the finding in the Churchill case, 25 C't Cl's, 2, and cited as an authority in the Ewing case. But in this case the finding of the Court of Claims is: "It was necessary to take acknowledgments *separately*, and it was so done."

This makes each acknowledgment a separate and distinct act, and not a joint and single act. For taking a separate acknowledgment of defendant and surety at different times and places, the commissioner is clearly entitled to 25 cents for each acknowledgment. The distinction between this case and the Ewing case is clear and controlling. The same charge was allowed by the Court of Claims in McCafferty *vs.* U. S., 26 C't Cl's, 1.

Items 2, 4, 5, 6, 7, 8 are fully sustained by this Court in the Ewing and Barber cases, 140 U. S. R., 143, 164, 177; U. S. *vs.* Jones, 134 U. S., 483.

As said by this Court in the Jones case, "the approval of a commissioner's account by a circuit court of the United States under the act of February 22, 1875, is *prima facie* evidence of the correctness of that account; and in the absence of clear and unequivocal proof of mistake on the part of the court it should be conclusive."

It is submitted that the appellant has failed to show any mistake on the part of the court in approving this account, and the judgment of the court below should be affirmed.

CHARLES C. LANCASTER,
Counsel for Appellee.